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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/345,090	06/30/1999	BRUCE C. JOHNSON	PPC-691	9807

7590 07/12/2002

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EXAMINER	
RUHL, DENNIS WILLIAM	
ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 07/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/345,090	Applicant(s) JOHNSON ET AL.	
	Examiner Dennis Ruhl	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 April 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *29-51 and 55* is/are allowed.

6)☒ Claim(s) *1-28 and 52-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120.

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

Applicant's amendment of 4-29-02 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-23,25-28,52-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (6228462).

With respect to claims 1-8,10-19,28, Lee discloses a multi layer film for use in absorbent articles. See the figures where the 3-D web can be seen. The 1st layer is what Lee calls the rigid layer 103. See column 8, lines 40-49 for the disclosure of the 2nd layer (2 rigid skin layers with an intermediate layer). The intermediate layer is the less rigid layer 101. See column 8, lines 63-65 and column 9, lines 10-13 for the disclosure of the 1st and 2nd thermoplastic components as claimed. The web also has apertures 41, base portions 51, and sidewall portions 53.

With respect to claims 9,23, see column 9, lines 11-13.

With respect to claims 10,11, the embodiment that has the 2 rigid skin layers (col. 8, lines 40-49) satisfies the claim limitations for the 2nd layer.

With respect to claims 20-22,25,26, see column 9, lines 14-36.

With respect to claim 27 see column 8, lines 40-49.

With respect to method claims 52-54 in addition to what the examiner has already stated Lee discloses, Lee discloses the claimed method of making. Applicant is referred to the method of making section in the specification of Lee where the claimed limitations can be found.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (6228462). Lee discloses the invention substantially as claimed. Lee does not

disclose the claimed amount of the pigment but does disclose that a pigment may be present. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Lee with the claimed amount of pigment depending on the color change desired. The more pigment that is added, more of a color change will occur.

5. Claims 29-51,55 are allowed.

6. Applicant's arguments filed 4-29-02 have been fully considered but they are not persuasive.

With respect to the traversal of the 102 rejection, applicant has argued that Lee does not teach or suggestion providing the "rigid layer" with a blend of at least two thermoplastic components as claimed. The examiner disagrees and is somewhat confused by applicant's argument. Applicant is referred to the 102 rejection of record where the examiner specifically referred applicant to the column and lines in Lee where the claimed limitation is disclosed. Lee discloses that the rigid layer can be a mixture of two thermoplastic components, and even discloses the ratios for these components that falls into the claimed ranges. The examiner takes notice that the instant specification discloses that the 1st thermoplastic component can be polyethylene and the 2nd thermoplastic component can be polystyrene. The examiner also takes notice that Lee discloses the exact same mixture so how can applicant argue that Lee does not disclose what is claimed? The different melting point temperatures would inherently be present in Lee. Also with respect to the heat bonding argument, applicant is referred to column 9, lines 52-63 where it is clearly disclosed that one of the thermoplastic

components can or will act as an adhesive to assist in adhesion to the intermediate layer. If the layer of Lee is heated the same results as claimed will occur. Applicant's argument appears to have no merit and are found non-persuasive.

With respect to the traversal of the 103 rejection, applicant has argued that "Lee fails to teach that the intermediate layer can accept the claimed higher pigment loading without damage to process equipment". Claim 24 has no limitation at all that comes close to claiming what has been argued. Where did this argument come from? What does damage to process equipment even mean? How does this basis for a traversal even relate to the 103 rejection set forth by the examiner? The examiner has no idea what applicant is attempting to argue with respect to claim 24 and because of this the argument is found to be non-persuasive.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DENNIS RUHL
PRIMARY EXAMINER

DR
July 11, 2002